

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 8, HAWAII HISTORIC PLACES REVIEW BOARD

CHAPTER 198

THE HAWAII AND NATIONAL REGISTERS OF HISTORIC PLACES PROGRAMS

Subchapter 1 General Provisions

§13-198-1	Purpose
§13-198-2	Definitions

Subchapter 2 Hawaii Register of Historic Places Program

§13-198-3	Nomination procedure
§13-198-4	Notification of owners
§13-198-5	Hearing procedures
§13-198-6	Conduct of the hearing
§13-198-7	Repealed
§13-198-8	Criteria for decisions; considerations
§13-198-9	Effects of ordering a property into the Hawaii register
§13-198-10	Removal of properties from the Hawaii register

Subchapter 3 National Register of Historic Places Program

§13-198-11	Nomination and approval procedure
§13-198-12	Criteria for evaluating nominations; considerations

Subchapter 4 Dual Nominations

§13-198-13	Procedure
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Historical Note: Chapter 13-198 Administrative Rules is based substantially upon the rule entitled, "Hawaii Foundation for History and the Humanities, State of Hawaii, Rules of the Hawaii Historic Places Review Board" of the Hawaii Foundation for History and the Humanities, State of Hawaii. [Eff 4/25/77; R 6/22/81]

Subchapter 1 General Provisions

§13-198-1 Purpose. The purpose of this chapter is to set forth the procedures by which historic properties shall be ordered and entered into the Hawaii register of historic places by the review board and by which nominations of historic properties to the national register will be approved by the review board. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §6E-5.5, 36 CFR Part 60)

§13-198-2 Definitions. As used in this chapter:

"Agency" means any board, commission, department, bureau, or political subdivision of the State, or county governments.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Buildings may refer to a historically related complex such as a court-house and jail or a house and barn.

"Department" means the department of land and natural resources, State of Hawaii.

"District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

"Hawaii register" means the Hawaii register of historic places, which is a state register of historic properties, maintained by the review board.

"Historic property" means any building, structure, object, district, area, or site, including underwater site, that is significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.

"National register" means the national register of historic places, which is a federal register of historic places maintained by the United States Secretary of Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C §461) and section 101(a) (1) of the National Historic Preservation Act (16 U.S.C. §470a).

"Object" means any material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable, yet may be related to a specific setting or environment.

"Owner or owners" means a person having fee simple title to the property being nominated for registration into the Hawaii register or national register, which interest is legally recorded at the bureau of conveyances or the land court at the State of Hawaii. If the property being nominated is publicly owned, the owner shall mean the department of land and natural resources or in cases where the public property is under the control and management (i.e. deed, executive order) of an agency, shall mean the administrative officer responsible for the control and management of the property. Owner shall not include persons holding less than fee interest in the property (i.e. lease, easement, permit, or license).

"Party" means each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party, in any hearing before the review board under this chapter.

"Person" includes an individual, partnership, corporation, association, or public or private organization of any character other than an agency.

"Preservation officer" means the state historic preservation officer.

"Review board" means the Hawaii historic places review board.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structures.

"State" means the State of Hawaii.

"Structure" means a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

[Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §6E-5.5, 91-1, 36 CFR 60.3)

Subchapter 2 Hawaii Register of Historic Places Program

§13-198-3 Nomination procedure. The preservation officer, or any person or agency may nominate a building, structure, object, district, or site for entry into the Hawaii register. Nominations shall be made on the standard national register nomination forms, available in the office of the preservation officer, in accordance with the technical guidelines for the completion of those forms. Each nomination form shall be accompanied by:

- (1) A map clearly showing the exact boundaries of the property being nominated; and
- (2) A contemporary, good quality photograph or photographs of the property being nominated; which provide or provides a clear and accurate visual representation of the property and its setting.

All nominations which do not fulfill these requirements or are otherwise judged to have insufficient information may be returned by the review board to the nominator for resubmission upon compliance with these requirements. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §6E-5.5)

§13-198-4 Notification of owners. (a) Upon receipt of a nomination which complies with all the necessary requirements of section 13-198-3, the review board shall schedule a hearing to consider whether the nominated property should be ordered into the Hawaii register.

(b) Notification of the hearing shall be provided to each owner and the nominator by registered or certified mail with return receipt requested at least forty-five days before the hearing; provided that, if service by registered or certified mail is not made because of refusal by an owner to accept service, or if the review board or its agents have been unable to ascertain the address of the owner or owners after reasonable and diligent inquiry, the notice of hearing may be given to the owner or owners by publication at least once in each of two successive weeks in a newspaper of general circulation in the State. The last published notice shall appear at least thirty days prior to the date of the hearing. The notice of hearing shall conform with the requirements of section 92-7, Hawaii Revised statutes.

(c) The notice shall also state that the owner has thirty days from receipt of the notice to submit written comments and concur with the nomination or submit a statement of objections to the review board.

(d) Upon notification, any owner of private property who objects to the nomination of the property shall submit to the review board a notarized statement certifying that the person is the owner of the private property and objects to the listing. If the owner of private property properly objects to the nomination, then the property shall not be included in the national register but shall only be considered for determination of eligibility pursuant to 36 C.F.R. §60.6. This subsection does not apply to nominations to the Hawaii register. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §§92-7, 6E-5.5, 16 U.S.C. §470(a)(6), 36 CFR §60.6)

§13-198-5 Hearing Procedures. (a) The chairperson or other member of the review board designated by the chairperson shall preside at all hearings before the review board on nominations to the Hawaii register. The presiding officer shall control the course of hearings and dispose of any matter that normally and properly arises before or in the course of a hearing, and take all other actions authorized by law that are deemed necessary for the orderly and just conduct of a hearing.

(b) The presiding officer, in its discretion or at the request of a party, may postpone or continue any hearing.

(c) The hearing shall be held at the time and place set forth in the notice of hearing but, at such time and place, may be continued from day to day, or adjourned to a later day or to a different place, without notice other than announcement thereof at the hearing by the presiding officer.

(d) The review board shall tape record all testimony and prepare written minutes of the hearing. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §§91-2, 92-9)

§13-198-6 Conduct of the hearing. (a) The hearings on a nomination of a property to the Hawaii register shall be conducted in a manner which affords all parties full opportunity to present evidence and argument on all issues involved. Any person or persons who willfully disrupts a hearing to prevent and compromise the conduct of the hearing may be removed from the hearing room.

(b) The presiding officer shall convene the hearing and briefly summarize the nature of the hearing and the issues involved.

(c) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments which are relevant to the nominations noticed for the hearing.

(d) In a hearing on a nomination to the Hawaii register, the nominator shall make the initial presentation and submit oral or documentary evidence necessary for the presentation of the nominator's case. All witnesses testifying for the nominator shall be subject to examination by the members of the review board.

(e) Following submission of all the testimony, the review board shall take action and render a decision on the nomination of the property onto the Hawaii register. If the owner of the private property being nominated objects to the nomination of the property onto the Hawaii register, then the owner may request a contested case hearing by the close of the review board meeting pursuant to section 13-197-11. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §6E-5.5, 91.2) (Imp: HRS §91-2, 92-3)

§13-198-7 Decision and order. (a) The review board shall render its decision and order in writing or on the record within a reasonable time after the close of the hearing.

(b) A certified copy of the decision and order shall be delivered or mailed to each party within a reasonable time after its issuance by the review board. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §§91-2)

§13-198-8 Criteria for decisions; considerations. In deciding whether a property should be entered and ordered into the Hawaii register, the review board shall evaluate whether the property meets or possesses, individually or in combination, the following criteria or characteristics:

- (1) The quality of significance in Hawaiian history, architecture, archaeology, and culture, which is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:
 - (A) That are associated with events that have made a significant contribution to broad patterns of our American or Hawaiian history;
 - (B) That are associated with the lives of persons significant in our past;
 - (C) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - (D) That have yielded, or may be likely to yield, information important in prehistory or history;
- (2) Environmental impact, i.e., whether the preservation of the building, site, structure, district, or object significantly enhances the environmental quality of the State;
- (3) The social, cultural, educational, and recreational value of the building, site, structure, district, or object, when preserved, presented, or interpreted, contributes significantly to the understanding and enjoyment of the history and culture of Hawaii, the Pacific area, or the nation. [Eff 6/22/81; am and comp 3/9/89] (Auth: §§6E-5.5, 91-2) (Imp: HRS §6E-5.5)

§13-198-9 Effects of ordering a property into the Hawaii register. The entering and ordering of a property into the Hawaii register signifies a recognition that the owner has a historic property, and that the preservation and maintenance of the property is contributing to the State's and nation's historic patrimony, and is thus serving the public. When privately owned property is ordered into the Hawaii register, certain responsibilities are placed on the owners as set forth in sections 6E-10 and 343-5, Hawaii Revised Statutes. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §6E-5.5) (Imp: HRS §§6E-5.5, 6E-10, 343-5)

§13-198-10 Removal of properties from the Hawaii register. (a) Properties listed in the Hawaii register may be removed therefrom:

- (1) When the qualities which caused them originally to be listed have been lost or destroyed; or
 - (2) Upon proof that an error in professional judgment has been made; or
 - (3) For failure to follow the procedures set forth in these rules.
- (b) The procedures for removal of properties from the Hawaii register shall be parallel to the foregoing rules for registration. [Eff 6/22/81; comp 3/9/89] (Auth: HRS §6E-5.5) (Imp: HRS §6E-5.5)

Subchapter 3 National Register of Historic Places Program

§13-198-11 Nomination and approval procedure. (a) A nomination of a building, structure, object, district, or site for entry into the national register shall be made by the preservation officer in accordance with the procedures, including notification and hearing procedures, set forth in this chapter and in title 36, Code of Federal Regulations, Part 60.

(b) If the owner of private property properly objects to the nomination of the property onto the national register then the property shall not be included in the national register but shall only be considered for determination of eligibility pursuant to 36 CFR §60.6. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp. HRS §6E-5.5, 36 CFR Part 60)

§13-198-12 Criteria for evaluating nominations; considerations. The criteria for evaluating nominations to the national register shall be as provided in title 36, Code of Federal Regulations, Part 60. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §6E-5.5, 36 CFR §60.4)

Subchapter 4 Dual Nomination

§13-198-13 Procedure. In the event a property is nominated both to the Hawaii register and the national register and the owner or owners of private property objects to the nomination then the owner of the private property shall:

- (1) File a statement of objections as provided in section 13-198-4 to the nomination onto the national register not later than thirty days after receipt of the nomination notice; and
- (2) Request a contested case hearing pursuant to §13-197-11 on the nomination to the Hawaii register by the close of the scheduled review board meeting.

[Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §6E-5.5, 36 CFR Part 60)